

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petitions for Declaratory Ruling Regarding the)	WC Docket No. 05-276
Application of Access Charges to the Wholesale)	
Transmission of Long Distance Traffic Using)	
IP Technology)	

COMMENTS OF CINCINNATI BELL TELEPHONE COMPANY

Cincinnati Bell Telephone Company LLC (CBT) submits these Comments in response to the Commission's September 26, 2005 Public Notice regarding SBC's and VarTec's petitions for declaratory ruling regarding the application of access charges to Internet protocol (IP) transported calls.¹ Specifically, CBT urges the Commission to respond promptly to these petitions by clarifying that when wholesale transmission providers use IP technology to carry long distance calls that originate and terminate on the public switched telephone network (PSTN) they are subject to access charges.

I. INTRODUCTION

The SBC incumbent local exchange carriers (SBC) and VarTec Telecom, Inc. (VarTec) have each filed a petition for declaratory ruling asking the Commission to clarify its rules regarding the application of access charges to long distance calls that originate and terminate on the PSTN but are carried by a wholesale provider that uses IP technology to transport the call prior to its termination on the PSTN.² The impetus for

¹ *Pleading Cycle Established for SBC's and VarTec's Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP Transported Calls*, WC Docket No. 05-276, Public Notice, DA 05-2514 (released September 26, 2005).

² *Petition of the SBC ILECs for a Declaratory Ruling that UniPoint Enhanced Services, Inc. d/b/a PointOne and Other Wholesale Transmission Providers Are Liable for Access Charges* (filed September

these petitions is a dispute between SBC and VarTec, Unipoint (d/b/a PointOne) and Transcom over whether access charges are due to the terminating local exchange carrier (LEC) for a long distance call that originates and terminates on the PSTN, but is handed off by the calling party's interexchange carrier (IXC) to a wholesale transmission provider that uses IP technology who delivers the call to the terminating LEC or intermediary LEC. If access charges are due to the terminating LEC, the parties also seek clarification regarding which carrier (i.e., the calling party's IXC or the wholesale transmission provider) is liable for payment of access charges to the terminating LEC.

SBC asserts that the calls in question are subject to access charges according to the Commission's previous ruling in the AT&T Order³ which held that an interexchange call that: (1) uses ordinary customer premises equipment (CPE) with no enhanced functionality; (2) originates and terminates on the PSTN; and (3) undergoes no net protocol conversion and provides no enhanced functionality to end users due to the provider's use of IP technology is subject to access charges, regardless of whether only one interexchange carrier uses IP transport or multiple service providers are involved in providing the IP transport.⁴ On the other hand, VarTec, Unipoint and Transcom argue that access charges are not applicable on calls which VarTec hands off to Unipoint or Transcom, because Unipoint and Transcom consider themselves to be information service providers eligible for the enhanced services provider (ESP) exemption from access charges.

19, 2005) (SBC Petition) and *Petition for Declaratory Ruling that VarTec Telecom, Inc. Is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers when Enhanced Service Providers or Other Carriers Deliver the Calls to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers for Termination* (filed August 20, 2004) (VarTec Petition).

³ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, WC Docket No. 02-361, *Order* (rel. April 21, 2004) (AT&T Order).

⁴ *Id.* at ¶ 1.

CBT agrees with SBC's argument that the calls in question are appropriately subject to access charges pursuant the terms of the AT&T Order and that attempts by VarTec, Unipoint, Transcom and other providers to evade access charges on such calls under the guise of the ESP exemption must be stopped.

II. DISCUSSION

A. Access Charges Apply to All PSTN-to-PSTN Calls Employing IP Transmission

CBT believes that the Commission unambiguously ruled in the AT&T Order that PSTN-to-PSTN calls that use IP transport in the middle, undergo no net protocol conversion and do not provide the caller with enhanced functionality (i.e., use of the IP transport is transparent to both the calling and called parties) are subject to access charges in the same manner as any other ordinary long distance call. The Commission addressed the situation presented in the current petitions (i.e., the case of multiple service providers providing the long distance transmission component of the call) by explaining that its analysis applies regardless of whether only one interexchange carrier uses IP transport or instead multiple service providers are involved in providing IP transport.⁵ The Commission included this clarification regarding multiple service providers to ensure that its ruling would not place AT&T at a competitive disadvantage. Accepting the VarTec, Unipoint, and Transcom interpretation regarding the applicability of the ESP exemption in this scenario would clearly disadvantage IXC's that do not hand their long distance traffic off to an unaffiliated wholesale IP transmission provider.

The consequences of sanctioning this use of the ESP exemption would create a significant loophole in the current access charge system that could quickly erode the

⁵ *Id.* at ¶ 19.

access charges of incumbent LECs across the country. This loophole would enable virtually every IXC to evade access charges by simply partnering with a carrier that uses IP transmission to carry the final leg of the long distance call. Within a very short time ILEC switched access charges and the carrier portion of ILEC special access charges could disappear. The local reciprocal compensation revenue that the ILECs would receive from the competitive LECs that partner with these IP transport providers will be a fraction of the amount of their existing access revenue.⁶ Even if the so-called ESPs terminate the calls directly to the ILECs by purchasing primary rate interface lines (PRIs), the ILECs' revenue will decline significantly relative to access charges.

The Commission must not allow for the elimination of access charges through such a backdoor means. Such action would undermine the broader efforts to reform intercarrier compensation in a responsible manner that recognizes ILEC carrier of last resort (COLR) obligations. As long as the incumbent carriers are required as the COLR to maintain ubiquitous local networks, the ILECs must be allowed to recover some of the costs associated with this obligation from other carriers who also benefit from access to these networks. Until a comprehensive intercarrier compensation plan is implemented, access charges remain a critical component in enabling ILECs to meet their COLR obligations.

B. Access Charges Should be Paid By the Last Wholesale Long Distance Transmission Provider

In addition to clarifying that access charges are due on the calls in question in these petitions, the Commission should also clarify which service provider is responsible for payment of access charges to the terminating LEC. CBT agrees with SBC's analysis

⁶ Based on current switched access rates and reciprocal compensation rates, CBT estimates that it would lose approximately \$20 million annually if the Commission sanctions this loophole.

that “when wholesale transmission providers use IP technology to carry ordinary long distance calls that originate and terminate on the PSTN, they are acting as ‘interexchange carriers’ for purposes of Rule 69.5 and are accordingly subject to access charges.”⁷ It is common industry practice for a retail IXC to contract with another long-haul provider to transport calls to the terminating local exchange carrier’s network. The means by which the wholesale provider transports the traffic (i.e., traditional facilities or IP facilities) is irrelevant. The fact remains that the calls reach their final destination on the PSTN of the called party in the same format in which they originated, regardless of the technology used at any point in between, and the calling and called parties have no idea what technology or how many carriers may have been used to get the call from its originating point to its terminating point.

Under the current rules, the provider that hands the call off to the terminating LEC pays the access charges.⁸ Typically, this wholesale provider will recoup these charges from the retail IXC according to the terms of their wholesale transmission contract. Under some contracts the access charges may be passed through directly, while other contracts may simply build an average level of access charges into the overall per minute rate that the wholesale provider charges for its transmission services. Thus, although the wholesale transmission provider pays access charges to the terminating LECs, in reality the retail IXC ultimately incurs these charges, whether it realizes this or not.

⁷ SBC Petition at p. 2.

⁸ In the situation where the wholesale transmission provider hands the call off to an intermediary CLEC to transfer the call to the terminating ILEC via local interconnection trunks, the intermediary CLEC would also be serving as an IXC for this transaction and the ILEC would assess the CLEC access charges for this call.

Simply because the wholesale transmission provider uses IP technology and considers itself to be an information service provider for some of the services it provides using this technology does not preclude it from being considered an interexchange carrier when it is transporting ordinary long distance traffic on behalf of a retail IXC. It is not uncommon for service providers to serve in various capacities and to fall under different rules depending on which service or type of traffic they are carrying at a given moment.⁹ The Commission acknowledged this in the AT&T Order when addressing the scenario of multiple carriers transporting the long distance calls. Specifically, the Commission explained that for purposes of 47 C.F.R. § 69.5(b), “[d]epending on the nature of the traffic, carriers such as commercial mobile radio service (CMRS) providers, incumbent LECs, and competitive LECs may qualify as interexchange carriers for purposes of this rule.”¹⁰ This statement does not limit the interexchange carrier role to the listed providers, but simply demonstrates that carriers can serve in multiple capacities, and as such be subject to different rules depending upon the service they are providing at the time.

In the case before the Commission in these petitions, clearly the wholesale transmission providers qualify as interexchange carriers, even though they may be information service providers in their provision of other services. To reach any other conclusion would be discriminatory because these carriers utilize local exchange switching facilities in exactly the same manner and for the same purposes as interexchange carriers that do not use IP technology to transport these PSTN-to-PSTN

⁹ See, SBC Petition at pp. 17-20.

¹⁰ AT&T Order at ¶19, footnote 80.

calls.¹¹ To allow the carrier that uses IP technology to evade access charges while subjecting the interexchange carrier that uses traditional facilities to access charges would create a major inequity in the Commission's rules and open up arbitrage opportunities that will undermine the entire access charge regime.

C. Commission Should Require Proper Identification of PSTN-to-PSTN Traffic

In conjunction with clarifying that wholesale transmission providers using IP technology to transport ordinary long distance calls for a retail IXC are subject to access charges, the Commission should also clarify its rules to require that the calling party number (CPN) signaled with these calls must include the true CPN of the originating end user served by the retail IXC. This action will reduce the number of calls that LECs receive without proper identifying information, whether caused inadvertently because there is currently no clear requirement that this information be transmitted or due to intentional manipulation of the CPN by intermediary carriers to disguise the jurisdiction of the traffic. Without this accompanying clarification, terminating LECs will typically have no means to ascertain whether the traffic they are receiving is truly long distance traffic subject to access charges and no recourse for questioning suspect traffic.

III. CONCLUSION

CBT urges the Commission to promptly issue a clarification that wholesale transmission providers using IP technology to transport ordinary long distance calls that originate and terminate on the PSTN without the use of enhanced CPE and, which undergo no net protocol conversion and provide end users no enhanced functionality, are considered IXCs when handling these calls and, therefore, are responsible for payment of

¹¹ See, SBC Petition at pp. 7- 10.

access charges on those calls. This finding would be consistent with previous Commission rulings and is necessary to close a loophole that could quickly undermine the existing carrier access charge regime.

Respectfully submitted,

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November 10, 2005

CERTIFICATE OF SERVICE

I hereby certify that, on the 10th day of November 2005, I served a copy of the forgoing Comments of Cincinnati Bell Telephone Company upon each of the parties on the attached service list via First Class Mail, postage prepaid or via electronic filing.

/s/ Patricia L. Rupich
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